

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA  
AT OMAHA, NEBRASKA

GUILLERMO HERRERA, III,	)	Case No.: 8:15-cv-426-JMG-CRZ
	)	
Plaintiff,	)	
	)	<b>DEFENDANT'S ANSWERS TO</b>
vs.	)	<b>PLAINTIFF'S THIRD SET OF</b>
UNION PACIFIC RAILROAD COMPANY, a	)	<b>INTERROGATORIES</b>
Delaware corporation,	)	
	)	
Defendant.	)	

COMES NOW the Defendant, UNION PACIFIC RAILROAD COMPANY ("Union Pacific") and for its Answers to Plaintiff's Third Set of Interrogatories, states and alleges as follows:

**INTERROGATORY NO. 24:** Mr. Robert (Bobby) Herrera testified in his deposition that he called Mr. Carlos Diaz on his cell phone as coworkers were assisting Mr. Guillermo Herrera to Mr. Robert Herrera's van. (Robert Herrera Deposition, 24:1-18.) Mr. Robert Herrera estimated he made this call about 1:00 or 1:30. (Robert Herrera Deposition, 25:12-13.)

Counsel for Plaintiff has reviewed the cell phone records of Mr. Diaz and cannot locate on those records the call from Mr. Robert Herrera. Counsel for Plaintiff was not provided the cell phone records of Mr. Robert Herrera in Defendant's Supplemental Responses and Objections to Plaintiff's First Request for Production of Documents.

Please state when Mr. Robert Herrera called Mr. Carlos Diaz on his cell phone as co-workers were assisting Mr. Guillermo Herrera to Mr. Robert Herrera's van.

**ANSWER:** Robert Herrera does not have a company-issued cell phone and Union Pacific does not have access to the telephone records of Robert Herrera. Union Pacific does not know if or when Robert Herrera may have telephoned Carlos Diaz. However, Robert Herrera's memory is different than Mr. Diaz's memory in that Mr. Diaz testified he and Robert Herrera communicated by radio, and not by cell phone, on the day of the incident in question. (Diaz Deposition, 8:11-24). In addition, counsel for plaintiff already took the deposition of Robert Herrera and questioned him regarding this matter.

UNION PACIFIC RAILROAD COMPANY, A  
Delaware corporation, Defendant,

By: /s/ David J. Schmitt  
William M. Lamson, Jr., #12374  
David J. Schmitt, #19123  
LAMSON, DUGAN & MURRAY, LLP  
10306 Regency Parkway Drive  
Omaha, NE 68114  
(402) 397-7300 = Telephone  
(402) 397-7824 = Facsimile  
wlamson@ldmlaw.com  
dschmitt@ldmlaw.com

and

Torry N. Garland, #21624  
Union Pacific Railroad Company  
1400 West 52<sup>nd</sup> Avenue  
Denver, CO 80221  
(303) 405-5402  
(303) 405-5413 – Facsimile  
tngarlan@up.com

ITS ATTORNEYS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answers to Plaintiff's Third Set of Interrogatories were served upon the following attorneys designated below by email this 30<sup>th</sup> day of November, 2016:

James L. Cox, Jr.  
Brent Coon & Associates, PC  
3801 E. Florida Ave., Suite 905  
Denver, CO 80210-2500

\_\_\_\_\_  
/s/David J. Schmitt  
David J. Schmitt

635525